

and metallic parts completely and permanently encased in a nonmetallic covering.

NOTE: Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate optical product include: screws; the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, tubes and nuts of screw assemblies; dowels; pad inserts; springs for spring shoe straps, cores and/or inner windings of comfort cable temples; metal parts permanently encased in a non-metallic covering; and for oxfords, the handle and catch.

(c) Exemptions recognized in the industry and not to be considered in any assay for quality of a silver industry product include screws, rivets, springs, spring pins for wrist watch straps; posts and separable backs of lapel buttons; wire pegs, posts, and nuts used for applying mountings or other ornaments, which mountings or ornaments shall be of the quality marked; pin stems (e.g., of badges, brooches, emblem pins, hat pins, and scarf pins, etc.); levers for belt buckles; blades and skeletons of pocket knives; field pieces and bezels for lockets; bracelet and necklace snap tongues; any other joints, catches, or screws; and metallic parts completely and permanently encased in a non-metallic covering.

(d) Exemptions recognized in the industry and not to be considered in any assay for quality of an industry product of silver in combination with gold include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., posts and separable backs of lapel buttons, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

(e) Exemptions recognized in the industry and not to be considered in any assay for quality of a platinum industry product include springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dust bands, detachable movement rims, hat-pin stems, and bracelet and necklace snap tongues. In addition, the following exemptions are recognized for products marked in accordance with section 23.8(b)(5) of these Guides (i.e., products that are less than 500 parts per thousand platinum): pin tongues, joints, catches, lapel button backs and the posts to which they are attached, scarf-pin stems, hat pin sockets, shirt-stud backs, vest-button backs, and ear-screw backs, provided such parts are made of the same quality platinum as is used in the balance of the article.

PART 24—GUIDES FOR SELECT LEATHER AND IMITATION LEATHER PRODUCTS

Sec.

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AUTHORITY: 15 U.S.C. 45, 46.

SOURCE: 61 FR 51583, Oct. 3, 1996, unless otherwise noted.

§ 24.0 Scope and purpose of guides.

(a) The Guides in this part apply to the manufacture, sale, distribution, marketing, or advertising of all kinds or types of leather or simulated-leather trunks, suitcases, traveling bags, sample cases, instrument cases, brief cases, ring binders, billfolds, wallets, key cases, coin purses, card cases, French purses, dressing cases, stud boxes, tie cases, jewel boxes, travel kits, gadget bags, camera bags, ladies' handbags, shoulder bags, purses, pocketbooks, footwear, belts (when not sold as part of a garment) and similar articles (hereinafter, “industry products”).

(b) These Guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These Guides specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to the manufacture, sale, distribution, marketing, and advertising of industry products listed in paragraph (a) of this section. They provide the basis for voluntary compliance with such laws by members of industry. Conduct inconsistent with the positions articulated in these Guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the behavior falls within the scope of conduct declared unlawful by the statute.

§ 24.1 Deception (general).

It is unfair or deceptive to misrepresent, directly or by implication, the

kind, grade, quality, quantity, material content, thickness, finish, serviceability, durability, price, origin, size, weight, ease of cleaning, construction, manufacture, processing, distribution, or any other material aspect of an industry product.

§ 24.2 Deception as to composition.

It is unfair or deceptive to misrepresent, directly or by implication, the composition of any industry product or part thereof. It is unfair or deceptive to use the unqualified term “leather” or other unqualified terms suggestive of leather to describe industry products unless the industry product so described is composed in all substantial parts of leather.¹ This section includes, but is not limited to, the following:

(a) *Imitation or simulated leather.* If all or part of an industry product is made of non-leather material that appears to be leather, the fact that the material is not leather, or the general nature of the material as something other than leather, should be disclosed. For example: Not leather; Imitation leather; Simulated leather; Vinyl; Vinyl coated fabric; or Plastic.

(b) *Embossed or processed leather.* The kind and type of leather from which an industry product is made should be disclosed when all or part of the product has been embossed, dyed, or otherwise processed so as to simulate the appearance of a different kind or type of leather. For example:

(1) An industry product made wholly of top grain cowhide that has been processed so as to imitate pigskin may be represented as being made of Top Grain Cowhide.

(2) Any additional representation concerning the simulated appearance of an industry product composed of leather should be immediately accompanied by a disclosure of the kind and

type of leather in the product. For example: Top Grain Cowhide With Simulated Pigskin Grain.

(c) *Backing material.* (1) The backing of any material in an industry product with another kind of material should be disclosed when the backing is not apparent upon casual inspection of the product, or when a representation is made which, absent such disclosure, would be misleading as to the product's composition. For example: Top Grain Cowhide Backed With Vinyl.

(2) The composition of the different backing material should be disclosed if it is visible and consists of non-leather material with the appearance of leather, or leather processed so as to simulate a different kind of leather.

(d) *Misuse of trade names, etc.* A trade name, coined name, trademark, or other word or term, or any depiction or device should not be used if it misrepresents, directly or by implication, that an industry product is made in whole or in part from animal skin or hide, or that material in an industry product is leather or other material. This includes, among other practices, the use of a stamp, tag, label, card, or other device in the shape of a tanned hide or skin or in the shape of a silhouette of an animal, in connection with any industry product that has the appearance of leather but that is not made wholly or in substantial part from animal skin or hide.

(e) *Misrepresentation that product is wholly of a particular composition.* A misrepresentation should not be made, directly or by implication, that an industry product is made wholly of a particular composition. A representation as to the composition of a particular part of a product should clearly indicate the part to which the representation applies.² Where a product is made principally of leather but has certain non-leather parts that appear to be leather, the product may be described

¹For purposes of these Guides, footwear is composed of three parts: the upper, the lining and sock, and the outersole. These three parts are defined as follows: (1) The upper is the outer face of the structural element which is attached to the outersole; (2) the lining and sock are the lining of the upper and the insole, constituting the inside of the footwear article; and (3) the outersole is the bottom part of the footwear article subjected to abrasive wear and attached to the upper.

²With regard to footwear, it is sufficient to disclose the presence of non-leather materials in the upper, the lining and sock, or the outersole, provided that the disclosure is made according to predominance of materials. For example, if the majority of the upper is composed of manmade material: Upper of manmade materials and leather.

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as made of leather so long as accompanied by clear disclosure of the non-leather parts. For example:

(1) An industry product made of top grain cowhide except for frame covering, gussets, and partitions that are made of plastic but have the appearance of leather may be described as: Top Grain Cowhide With Plastic Frame Covering, Gussets and Partitions; or Top Grain Cowhide With Gussets, Frame Covering and Partitions Made of Non-Leather Material.

(2) An industry product made throughout, except for hardware, of vinyl backed with cowhide may be described as: Vinyl Backed With Cowhide (See also disclosure provision concerning use of backing material in paragraph (c) of this section).

(3) An industry product made of top grain cowhide except for partitions and stay, which are made of plastic-coated fabric but have the appearance of leather, may be described as: Top Grain Cowhide With Partitions and Stay Made of Non-leather Material; or Top Grain Cowhide With Partitions and Stay Made of Plastic-Coated Fabric.

(f) *Ground, pulverized, shredded, reconstituted, or bonded leather.* A material in an industry product that contains ground, pulverized, shredded, reconstituted, or bonded leather and thus is not wholly the hide of an animal should not be represented, directly or by implication, as being leather. This provision does not preclude an accurate representation as to the ground, pulverized, shredded, reconstituted, or bonded leather content of the material. However, if the material appears to be leather, it should be accompanied by either:

(1) An adequate disclosure as described by paragraph (a) of this section; or

(2) If the terms “ground leather,” “pulverized leather,” “shredded leather,” “reconstituted leather,” or “bonded leather” are used, a disclosure of the percentage of leather fibers and the percentage of non-leather substances contained in the material. For example: An industry product made of a composition material consisting of 60% shredded leather fibers may be described as: Bonded Leather Containing

60% Leather Fibers and 40% Non-leather Substances.

(g) *Form of disclosures under this section.* All disclosures described in this section should appear in the form of a stamping on the product, or on a tag, label, or card attached to the product, and should be affixed so as to remain on or attached to the product until received by the consumer purchaser. All such disclosures should also appear in all advertising of such products irrespective of the media used whenever statements, representations, or depictions appear in such advertising which, absent such disclosures, serve to create a false impression that the products, or parts thereof, are of a certain kind of composition. The disclosures affixed to products and made in advertising should be of such conspicuousness and clarity as to be noted by purchasers and prospective purchasers casually inspecting the products or casually reading, or listening to, such advertising. A disclosure necessitated by a particular representation should be in close conjunction with the representation.

§ 24.3 Misuse of the terms “waterproof,” “dustproof,” “warpproof,” “scuffproof,” “scratchproof,” “scuff resistant,” and “scratch resistant.”

It is unfair or deceptive to:

(a) Use the term “Waterproof” to describe all or part of an industry product unless the designated product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material.

(b) Use the term “Dustproof” to describe an industry product unless the product is so constructed that when it is closed dust cannot enter it.

(c) Use the term “Warpproof” to describe all or part of an industry product unless the designated product or part is such that it cannot warp.

(d) Use the term “Scuffproof,” “Scratchproof,” or other terms indicating that the product is not subject to wear in any other respect, to describe an industry product unless the outside surface of the product is immune to scratches or scuff marks, or is not subject to wear as represented.

(e) Use the term “Scuff Resistant,” “Scratch Resistant,” or other terms

indicating that the product is resistant to wear in any other respect, unless there is a basis for the representation and the outside surface of the product is meaningfully and significantly resistant to scuffing, scratches, or to wear as represented.

PARTS 25-227 [RESERVED]

PART 233—GUIDES AGAINST DECEPTIVE PRICING

Sec.

233.1 Former price comparisons.

233.2 Retail price comparisons; comparable value comparisons.

233.3 Advertising retail prices which have been established or suggested by manufacturers (or other nonretail distributors).

233.4 Bargain offers based upon the purchase of other merchandise.

233.5 Miscellaneous price comparisons.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

SOURCE: 32 FR 15534, Nov. 8, 1967, unless otherwise noted.

§ 233.1 Former price comparisons.

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious—for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction—the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the “reduced” price is, in reality, probably just the seller's regular price.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly

and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith—and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such language as, “Formerly sold at \$_____”), unless substantial sales at that price were actually made.

(c) The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In order subsequently to offer an unusual “bargain”, Doe begins offering Brand X at \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn't care, for he maintains that price for only a few days. Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific Bargain: X Pens, Were \$10, Now Only \$7.50!” This is obviously a false claim. The advertised “bargain” is not genuine.

(d) Other illustrations of fictitious price comparisons could be given. An advertiser might use a price at which he never offered the article at all; he might feature a price which was not used in the regular course of business, or which was not used in the recent past but at some remote period in the past, without making disclosure of that fact; he might use a price that was not openly offered to the public, or that was not maintained for a reasonable length of time, but was immediately reduced.

(e) If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, “Sale,” the advertiser must take care that the amount of reduction